IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.1360 OF 2004

Vithal Babu Gurav since deceased
through Lrs.Smt. Sindubai V.Gurav & Ors. ...Appellants.
Vs.
Maruti Dattatraya Dange. ...Respondent.
....
Mr. Kuldeep S. Patil for the Appellants.
None for the Respondent.
.....

CORAM :DR.D.Y.CHANDRACHUD, J.
July 10, 2007.

P.C.:

The Appellate Court while reversing the decree in part, in so far as the Trial Court had ordered the removal of encroachment, possession and mesne profits, has held that the Appellant herein, had not furnished an exact or particular description of the allegedly encroached portion. P.W.1 stated in the course of his deposition that the premises were not measured even after the Sale Deed at Exh. 82 in pursuance of which the Appellant was placed in possession. The finding of fact which has been recorded by the Appellate Court is that the Defendant had made a construction in the year 1973, during the life time of original vendor to which no objection has been raised by

the vendor. The wall which was put up is almost 18 feet. Finally it is necessary to note that in para 8 of the judgment, the Appellate Court recorded the admission of the Appellant that he was unaware of the area on which the alleged encroachment has been committed. In these circumstances, the Appellate Court was justified in holding that the relief of removal of encroachment, possession and mesne profits that was granted by the Trial Court was unsustainable. Moreover, the decree of the Trial Court was itself not cogent enough to be executable. There is, therefore, no merit in the Second Appeal. No substantial question of law is raised. However, since the declaration that is granted by the Learned Trial Judge has been reversed in appeal, it is needless to add that it would be open to the Appellants to take recourse to such remedies as are open in law. Subject to the aforesaid, the Second Appeal is dismissed.

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